



# OIEC QUARTERLY REVIEW

April - June 2010 (Issue 18)

## Letter from the Public Counsel



Dear Friends:

It was my honor to have the opportunity to testify before the Sunset Advisory Commission in June, 2010. It gave me an opportunity to share my pride in the accomplishments of the Office of Injured Employee Counsel (OIEC). Our many accomplishments at OIEC are due to the character and caliber of its employees, both at work and in their personal lives.

I am equally proud of the dedicated service by all the Regional Staff Attorneys (RSAs). However, two attorneys deserve special recognition. One RSA served our country as an infantry Major in the 101<sup>st</sup> Airborne Division, which is among the most elite of the U.S. Army's units. Another was voted by *Essence* magazine in 2007 as one of the "Top 25 Most Influential African-Americans." What an honor to serve with such distinguished attorneys.

Many of OIEC's employees serve humanitarian and charitable causes which they do on their own time to serve the public welfare. For example, one of our Directors volunteers twice a month with Meals on Wheels. Our employees make a difference in people's lives in many ways.

Noble service to our country, community, and the State of Texas defines our mission and our commitment at OIEC.

Sincerely,

Norman Darwin, Public Counsel

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# OIEC's Sunset Review Process Continues



The Sunset Review process is well underway. Sunset Advisory Commission Staff published its report on OIEC containing recommendations for statutory change by the Legislature as well as recommendations to improve internal operations that OIEC management would implement.

OIEC had its Sunset Hearing on July 6, 2010. All of the issues in OIEC's Sunset Staff Report were adopted with one amendment: OIEC will be going through the Sunset process again in six years (not twelve years as originally indicated in the Staff Report) in order to be reviewed at the same time as the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC).

A summary of key recommendations by Sunset Advisory Commission Staff and OIEC's responses to those recommendations are identified below:

- **Continue OIEC for 12 years (amended to six years at Sunset Hearing).**

This recommendation would continue OIEC as an independent agency, responsible for aiding injured employees in the workers' compensation system.

OIEC agrees with the staff's findings that Texas has a continued interest in aiding injured employees trying to navigate the workers' compensation system and that OIEC is and should continue to be the sole entity that assists, educates, and advocates on behalf of the injured employees of Texas.

- **Apply standard Sunset across-the-board requirements to OIEC.** This recommendation would require OIEC to maintain a system to promptly and efficiently act on complaints filed with OIEC. OIEC has taken the steps to ensure that the agency is already in compliance with the Sunset Advisory Commission Staff's across-the-board recommendation regarding complaints.

OIEC takes internal and external complaints seriously. It is a top priority of agency management to ensure complaints are handled promptly and properly, which is exhibited by the two internal audits conducted in the area of complaint handling at the direction of agency management.

- **Direct OIEC to work with TDI-DWC to ensure injured employees are fully prepared by Ombudsmen before attending a TDI-DWC Benefit Review Conference.** This recommendation would direct OIEC to take steps toward reducing the number of rescheduled proceedings at TDI-DWC through efforts by Ombudsmen to fully prepare injured employees they are assisting.

OIEC has taken numerous steps to ensure injured employees are fully prepared prior to entering the TDI-DWC administrative dispute resolution system. OIEC procedures have been changed to fully implement the agency's early intervention efforts. The fruits of these efforts will be reflected in data, which will be available at the end of the fiscal year 2010.

OIEC notes it is difficult to discourage its customers from entering the dispute resolution system if they are not fully prepared but also understands the paramount need to ensure State resources are used efficiently and effectively.

- **Limit OIEC's authority to access claim files for injured employees OIEC is not directly assisting.**

This recommendation would remove existing language that excepts OIEC from the confidentiality requirements surrounding claim file information and that directs TDI-DWC to release such information to OIEC. The recommendation would also remove language granting OIEC broad access to information from all executive agencies. Instead, the recommendation would clarify that OIEC has the same access to information that another, similarly situated party has and is allowed access to a claim file when officially assisting an injured employee.

Until the implementation of TDI-DWC's new computer system occurs, the changes made by the recommendation would require OIEC to self-enforce the legal limits on its authority to access information. OIEC would be required to work with TDI-DWC to implement new procedures by which OIEC will request information from TDI-DWC. The recommendation is not intended to require OIEC to use the Public Information Act to request information from TDI-DWC, which would be unnecessarily time consuming.

(Continued on page 3)



In addition, the recommendation would not restrict OIEC's access to information it uses to generally educate injured employees and death beneficiaries about the existence of OIEC and its services, which it does to fulfill its statutory duty to assist them in obtaining workers' compensation benefits.

As a result of OIEC's Legislative recommendation to the 81<sup>st</sup> Legislature, House Bill (HB) 673 substantially amended Section 404.111 to reduce OIEC's access to attorney-work product and enhance both civil and criminal penalties for any employee that improperly disclosed confidential claimant information. This statutory change was a direct result of legislation crafted by the author of workers' compensation reform, the Workers' Compensation Commissioner, and the Public Counsel. OIEC agrees with Sunset Advisory Commission Staff that OIEC has not misused its authority. OIEC's management is sensitive to the appearance of impropriety, and as the sole advocacy agency for the injured employee, it understands the importance of confidential claimant information.

Accessing claimant information is necessary for the agency to fulfill its cause and case advocacy roles. The agency accesses individual claimant information only after the injured employee authorizes the release of information and understands the agency's services. Aggregate information is needed to advocate on behalf of injured employees as a class. OIEC abides by restrictions pursuant to HB 673, and believes no further restrictions need to be made in light of severe penalties laid out in 404.111 for disclosing confidential information.

- **Direct OIEC to work with TDI-DWC to complete firewalls in the new database system.**

This recommendation would direct OIEC to work with TDI-DWC during its development of the new computer system to include proper firewalls restricting information. These firewalls would ensure that OIEC has the appropriate access to information needed to perform its duties without receiving information that is statutorily protected.

OIEC will work with TDI-DWC during its development of the new computer system to include proper firewalls restricting information from field office staff and has formed a committee to work with TDI-DWC staff to develop a new system to ensure appropriate access of information to OIEC staff. OIEC's management is sensitive to the appearance of impropriety and is committed to working with TDI-DWC in ensuring that a fair administrative dispute resolution process exists where issues are resolved satisfactorily amongst system participants.

The Sunset Commission will provide draft legislation to the Legislature to continue the agency for six years and correct issues identified in the Sunset review. Although not required by law, the Sunset Commission's legislative members traditionally introduce and carry Sunset legislation. Results of the Sunset legislation will impact OIEC as of September 1, 2011. ❖

## Strategic Planning Prepares OIEC for the Future

Strategic planning is a long-term, future-oriented process of assessment, goal setting, and decision-making that maps an explicit path between the present and a vision of the future. It guides budget preparation and establishes a basis for measuring success. The goal of strategic planning is to anticipate and accommodate the future by identifying issues, opportunities, and problems.



### OIEC's FY 2011-2015 STRATEGIC PLAN

An agency's strategic plan is a formal document that communicates its goals, directions, and outcomes to various audiences, including the Governor and the Legislature, client and constituency groups, the public, and the agency's employees. During the summer of every even numbered year, agencies submit their 5-year Strategic Plan. Strategic Plans are required to include the following elements:

Developed by the Governor and Legislative Budget Board (LBB):

- Statewide Vision, Mission, and Philosophy
- Statewide Goals and Benchmarks

Developed and submitted by agencies:

- Agency Mission: The reason for the agency's existence.
- Agency Philosophy: The expression of core values and principles for the conduct of the agency in carrying out its mission.
- External/Internal Assessment: An evaluation of key factors that influence the success of an agency in achieving its mission and goals. The external/internal assessment addresses economic, political, technological, demographic, and social factors affecting the agency, including both historical and future perspectives with reviews of past performance and forecasts of trends in the agency environment.

(Continued on page 4)



- **Agency Goals:** General ends toward which the agency directs its efforts.
- **Objectives and Outcome Measures:** Clear targets for specific action and the quantified results or effects of that action.
- **Strategies and Output, Efficiency, and Explanatory Measures:** Methods to achieve goals and objectives and the quantified end products, proficiencies, and descriptive indicators of the agencies' efforts.

The Strategic Plan must also contain or address the following items: Historically Underutilized Business Plan; Description of Agency Planning Process; Discussion of Current-Year Activities; Workforce Plan; and Report on Customer Service.

OIEC's FY 2011-2015 Strategic Plan has been submitted and can be viewed on OIEC's website at [www.oiec.state.tx.us/resources/publications.html](http://www.oiec.state.tx.us/resources/publications.html).

## FY 2012-2013 BUDGET STRUCTURE

Recommended changes to OIEC's FY 2012-2013 Budget Structure were submitted to the Governor's Office of Budget, Planning and Policy (GOBPP) and the Legislative Budget Board (LBB) on April 16, 2010. The budget structure consists of goals, strategies, measures, and measure definitions. The approved Budget Structure can be found in OIEC's FY 2011-2015 Strategic Plan on pages 68-71 (goals, strategies, and measures) and Appendix D (measure definitions).

## Strategic Planning and Performance Budgeting System

Most of OIEC's recommendations were approved by the GOBPP and LBB including some changes to the performance measure definitions and the deletion and addition of measures that more closely reflect OIEC's overall goals and objectives. There were no changes

to the goals and mission of OIEC to assist, educate, and advocate on behalf of the injured employees in Texas.

Two new measures were approved and will be reported beginning September 1, 2010. These measures identify performance related to OIEC's early intervention/case development process. The performance of the measures will be tracked during FY 2011 in order to create historical data prior to reporting the measure in FY 2012.

The GOBPP and LBB recommended and approved adding the definition of a Regional Staff Attorney to one of OIEC's measures for clarification.

The approved Budget Structure will be used as the framework for preparing OIEC's FY 2012-2013 Legislative Appropriations Request (LAR), which is due August 30, 2010. Additional information related to OIEC's LAR will be included in the next issue of the Quarterly Review. ❖

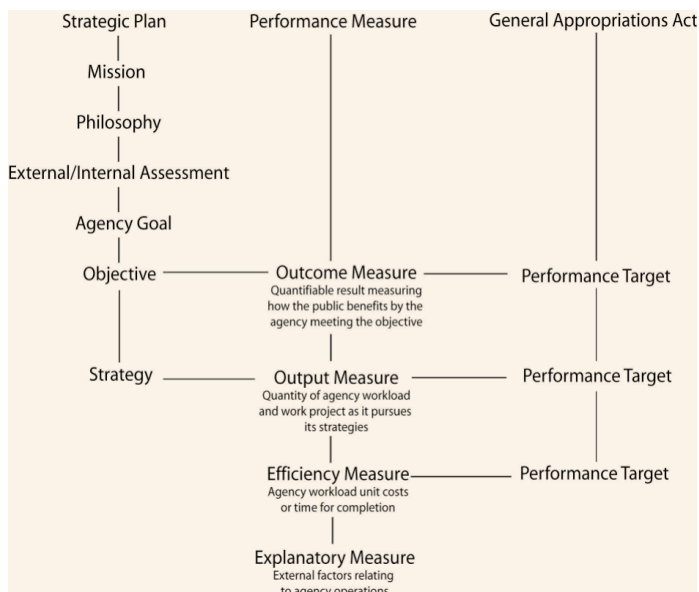
## Question of the Quarter

**Q:** I hurt my back at work five years ago. The insurance carrier paid weekly benefits for awhile and paid my medical bills. I stopped seeing the doctor a few years ago, even though I was still having quite a bit of pain and weakness. I finally decided to go back and see my doctor, but now the insurance carrier is disputing payment for the office visit. I am confused. I thought I had medical for life for this injury?

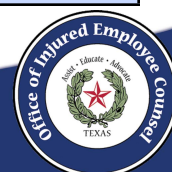
**A:** This can be a tricky subject. Texas Labor Code Section 408.021 states, "an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed." Since it has been a few years since you have seen a doctor for your injury, the insurance carrier might have concerns that the medical treatment you are currently seeking is unrelated to your original injury.

Also, TDI-DWC has adopted the Official Disability Guidelines (ODG) as the yardstick for determining what medical treatment is most appropriate for the particular injury. Health care providers are required to provide treatment in accordance with the ODG treatment guidelines. ODG treatment and services are presumed to be health care reasonably required. If the requested treatment falls outside the ODG, health care providers must obtain preauthorization for such treatment. It is possible that the treatment you are seeking now falls outside these guidelines.

You should discuss the situation with your doctor and insurance adjuster to see if there is just additional information needed to clarify your current medical needs. If you have further questions, please contact an OIEC CSR for assistance.



to



# OIEC's Annual Conference Considered One of the Best

June is a special month for OIEC. It is the one time each year that all agency employees come from across the State to gather for OIEC's Annual Conference. The conference, held this year in San Antonio June 23 – 25, is important for many reasons. It is an opportunity to provide consistent training, brainstorm, share best practices, and build camaraderie.

OIEC Public Counsel Norman Darwin opened the conference with a warm welcome and then discussed the important topic of causation and recent court cases. Many in attendance mentioned that Norman's pride and belief in the agency made them even more proud of the work they are doing.



Deputy Public Counsel Brian White provided detailed information about the agency's progress and what is ahead for the agency. He also included a creative teambuilding activity in his presentation where team members learned a little more about each other. His

positive attitude and enthusiasm were an excellent way to end the first day.

The highlight of the conference came on the second day when Dr. Michael Shepherd gave a meaningful and interactive presentation on the AMA Guides. His expertise in both the AMA Guides and the Texas Workers' Compensation system was apparent, and the audience was captivated by the information and the way he was able to break down such complex information. The feedback from the group was overwhelmingly that they want Dr. Shepherd to return next year and hopefully for a full day.

That afternoon the groups broke into three groups according to job function for more job specific training. These smaller groups were able to share important tips and information that they will put into practice in their local field offices.

The final day of the conference began with an upbeat Ethics presentation. The OIEC Ethics version of "Who Wants to Be a Millionaire" got everyone involved and



thinking about how they should handle the tough ethical issues they face. Employees also face the tough issue of time management and there were two presentations on that subject: one by OIEC employees with best practices on how they stay ahead of the curve and the other from an expert on strategic time management. The information was well received and on point. The conference wrapped up with service awards and technical achievement awards where the support of each other is always heartwarming.

One employee noted, "This was the best conference yet!" Another wrapped it up well when she said, "San Antonio is the perfect city for a conference. The conference was well planned and the guest speakers were well-informed and professional." Planning for next year's conference is already underway! All agency employees will be together again next year June 15 – 17, 2011. ❖



## TECHNICAL ACHIEVEMENT AWARDS

One of the most inspirational moments of the Annual OIEC Conference is when OIEC recognizes an Ombudsman, an Ombudsman Assistant, and a Customer Service Representative for their exceptional skills and knowledge. This year was no different, and the room burst into applause as the Technical Achievement Awards were presented to the following deserving employees:

**Enedina Aguirre, Ombudsman (Weslaco Field Office).** Enedina has a wealth of knowledge, having worked for the State for 23 years in workers' compensation. Even so, she considers the favorite part of her job that it is continually challenging, and she "learns



something new every day." Being thorough with her research is one of her biggest strengths. She argues the injured employee's case with tenacity, yet composure. Her Supervisor, Mary Watkins, praised Enedina's outstanding customer service to injured employees saying, "She is very patient, listening to her customers and providing assurance that their considerations will be addressed." Enedina's motivation for success does not only apply to the workplace. After training in Karate for four years, she earned her First Degree Black Belt at the age of 43.

**Lisa Broussard, Ombudsman Assistant, Beaumont Field Office.** Lisa hit the ground running when she began working for OIEC nearly three years ago. She learned quickly and implemented many beneficial ideas. She goes above and beyond to assist all internal and external customers with the best service possible. She was described by her Supervisor, Betty Troyer, as "competent, organized, professional, and compassionate." Lisa's favorite part of her job is helping resolve a dispute for an



injured employee. She said "there really isn't anything more gratifying than helping someone get denied services - whether it is monetary or medical." Lisa has never limited herself to her Functional Job Description. She is a member of the Ethics Committee and assisted with an internal process focus group. Her work in that group led her to be chosen to speak about the subject at the Annual Conference. Lisa's positive outlook is a product of finding the right balance inside and outside the office. In her off hours she enjoys photography, arts and crafts and being outdoors. But she knows how important her job at OIEC is and noted, "We here at OIEC make a difference in many, many people's lives every day."

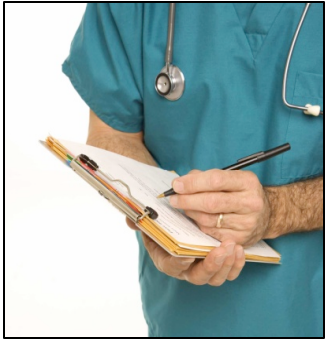
**Enedina Medina, Customer Service Representative (CSR), Denton Field Office.** Despite having no prior workers' compensation experience when she joined OIEC two years ago, Enedina has worked diligently to become a



top achiever. She handles the largest volume of work of any CSR in the Northern Region. Along with assisting customers with general questions, she also attempts to resolve complex disputes - and she is very successful at it. In the months of February and March 2010, she resolved 55 disputed issues for injured employees. Shawnee Ray, her supervisor, noted that "she approaches each day with a friendly, positive, and professional attitude." Enedina's compassion and empathy are evident when she mentions the favorite part of her job is "having the opportunity to make a difference and make this experience a little easier for the injured employee." Her thoughtfulness extends to her own office as well. Enedina wanted to make sure to thank her co-workers, as she felt they were part of her success and achieving this award.



## OIEC Participates in Health Care Reform Team



The Federal Health Care Reform bill, Patient Protection and Affordable Care Act of 2009, was signed into law on March 23, 2010. This new law is intended to provide accessible health care coverage for uninsured Americans as well help people who already have health insurance retain their coverage. If an injured

employee's workers' compensation injury is ultimately found to be not compensable, it may fall under many of the new health care reform provisions, which will be phased in through 2020. As a result of the recent federal legislation, the Federal Health Care Reform has mandated all states to create an Ombudsman Program to help consumers obtain health coverage. TDI is coordinating efforts to help create the Ombudsman Program statewide.

As a state agency with a strong Ombudsman Program, OIEC was invited to participate in the Federal Health Reform Consumer Services Team. Along with TDI and OIEC, the team also includes Texas Health and Human Services Commission (HHSC) and Office of Public Insurance Counsel (OPIC). OIEC has provided the team with the agency's statistics, mission, goals, and training manuals.

OIEC has created a Federal Health Care Reform information page with basic information and resource links. You can find more information about the progress of Federal Health Care Reform on OIEC's webpage, [www.oiec.state.tx.us/resources/fedhealthreform.html](http://www.oiec.state.tx.us/resources/fedhealthreform.html). ❖

## OIEC Field Offices Weather Hurricane Alex

South Texas braced itself for the first hurricane of the season. Hurricane Alex was on a direct path to make landfall south of Brownsville, in northeastern Mexico. Four of OIEC's field offices were most likely to be affected: Corpus Christi, Laredo, Victoria, and Weslaco, with Weslaco being the greatest concern.

It is not unusual for the Southern part of Texas to experience hurricanes. Ombudsman Supervisor, Mary Watkins noted, "the majority of the Weslaco Field Office staff have lived in the Valley for many years and are familiar with hurricane preparations. They also know not to take the weather warnings lightly." Once the warnings were issued, all staff immediately prepared for the arrival of Hurricane Alex. As TDI-DWC and OIEC are co-located in the field offices, it was a team effort. Boxes were placed high off the floor; computers were unplugged, covered with trash bags with the cables and cords removed; door frames were covered with plastic to avoid water leakage; and filing cabinets were locked. Staff informed injured employees of the office closure and provided with new appointment dates if necessary. Similar preparations occurred in the other field offices as well.

Once the field offices were settled, the staff faced preparations at their own homes. OIEC Regional Staff Attorney Jose Cuellar hurried into action and helped others ensure their homes were safe. Before the hurricane hit, Jose said that he, "filled sandbags, took the sandbags to his family and friends, boarded up windows, and collected as many supplies as possible." Other OIEC employees were doing the same things in their own neighborhoods.



Jose Cuellar (right) fills sandbags in preparation for the hurricane.  
Photograph by Jerry Lara, San Antonio Express-News.

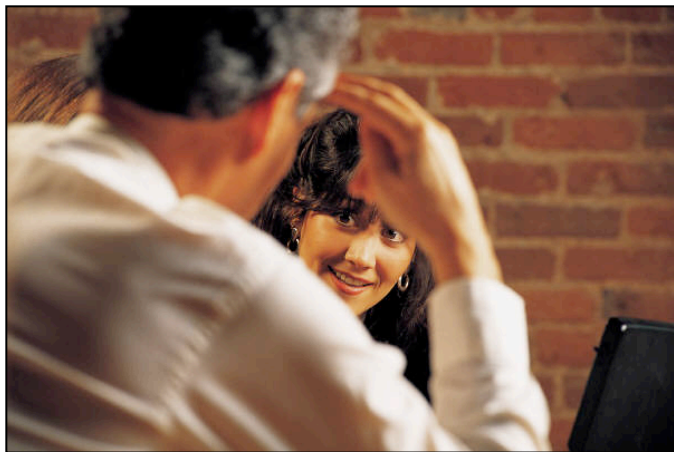
The hurricane hit on June 30, 2010. While it did cause heavy rains at all the affected field offices and significant flooding in the Valley, the field offices and their contents were safe due in large part to the diligent preparation from the TDI-DWC and OIEC staff. ❖

# OIEC Takes Pride in Recent Survey Results

This quarter OIEC received the results of two important surveys: the 2009 Customer Satisfaction Survey, which collected information from external customers, and the 2010 Survey of Employee Engagement, which collected information from OIEC's employees. The results from both surveys were excellent and OIEC management appreciates the thoughtful feedback the agency received.

## 2009 CUSTOMER SATISFACTION SURVEY

Texas Government Code §2114 requires all government agencies to develop and implement customer satisfaction assessment plans. Additionally, the agencies are required to submit a report including the survey findings to the GOBPP and LBB.



In order to comply with this statutory requirement and to obtain important feedback from its customers, OIEC launched its annual Customer Satisfaction Survey in January 2009. The Customer Satisfaction Survey included questions about internet usage, purpose of the visit to OIEC, and the quality of the services provided. The survey was available on OIEC's website and was available to all customers who visited OIEC's Field Offices. It was offered in both English and Spanish (and other languages upon request).

OIEC collected and analyzed the 2009 Customer Satisfaction surveys that were submitted by December 31, 2009. The 799 customers that completed the survey helped OIEC gather critical information that will be used for planning agency initiatives as well as evaluating

the quality of services it provides. The results and feedback from this survey were imperative to business process improvements to enhance the effectiveness of the agency's programs for the injured employees of Texas.

## 2010 SURVEY OF EMPLOYEE ENGAGEMENT

The Survey of Employee Engagement (SEE) is an organizational assessment tool that measures employee engagement specifically focusing on areas related to the engagement of employees towards successfully fulfilling the vision and mission of the organization. The SEE was conducted by the University of Texas at Austin's Institute of Organizational Excellence. OIEC is proud to note that between February 1 and February 8, 2010, all 167 OIEC employees completed this survey. A 100-percent response rate demonstrates that OIEC employees have an investment in OIEC. They want to see it improve and demonstrate a sense of responsibility to the organization.

The "Synthesis Score" of the survey is an average of all survey items and represents the overall score for the organization. For comparison purposes, Synthesis scores typically range from 3.25 to 3.75. OIEC's Synthesis Score of 4.0 suggests that employees perceive the issues more positively. At the highest level, the SEE consists of five Workplace Dimensions that capture the total work environment. Each Workplace Dimension is composed of several Survey Constructs designed to broadly profile areas of strength and concern so that interventions may be targeted appropriately. OIEC received scores higher than 3.75 in 12 of the 14 constructs, which indicate that employees perceived these areas to be of substantial strength. The top three areas of strength for OIEC were Supervision (score: 4.39), Strategic (score: 4.30), and External Communication (score: 4.27).

OIEC's management will continue to strive to make OIEC a great place to work. As its philosophy states, "OIEC is committed to protect the rights of the injured employees of Texas. We will provide the highest level of professional, efficient, and effective customer service; and maintain a work environment that values a diverse workforce, ethical management practices, teamwork, respect, and dignity." ❖





# OIEC Values the “Works Wonders” Program

OIEC knows that an ability to work and earn an income is especially important in today's economy. For those Texans with disabilities, finding work can be challenging. OIEC is proud to have utilized TIBH Industries in a recent outreach publications project.



OIEC determined it would be more efficient to have its outreach materials pre-inserted into the outreach folders and placed in envelopes so it would be easier to mail to customers. After attempting to complete it in-house, it became apparent that with the limited internal staff available it would be more effective to contract out this project. TIBH Industries is a unique, private, non-profit corporation that helps match Texans with disabilities to meaningful career opportunities.

OIEC used TIBH's services as part of the State Use Program, which is also known as “Works Wonders.” The State Use Program (Chapter 122 of the Human Resources Code) was adopted by the Legislature in 1978 to increase employment and wages and ultimately enhance the lives of Texans with disabilities. TIBH matched OIEC's project with employees from the Austin State School's Vocational Rehabilitation Center. The project was completed ahead of schedule, and the work was performed with the highest quality. OIEC hopes other State and local government entities will consider utilizing their services for their own outsourced projects. ❖

## Customer Service Successes

When injured employees first call OIEC, they are likely to speak with a Customer Service Representative (CSR). Experienced, knowledgeable and driven, the CSRs not only answer basic questions, they are often able to help resolve complex issues and make a true difference for injured employees. OIEC's most recent performance measures indicate OIEC staff is resolving over half of all disputed issues before these disputes enter the TDI-DWC administrative dispute resolution process.

Recently an injured employee contacted a Waco CSR. He had sustained a serious back injury in 1995, and had subsequently undergone numerous surgeries. Most recently the preauthorization division for his workers' compensation insurance company had denied his treating

doctor's requests for a specific medication and monthly office visits. The CSR researched the issue and determined the insurance company had a report from their own doctor who agreed with the treating doctor's requests. She quickly called a supervisor at the insurance company. The CSR explained the problem, pointing out to the supervisor that the insurance company's own doctor had agreed with the treatment request and suggested that she override the denial. After considering all of the information from the CSR, the supervisor prepared a new preauthorization plan for this injured employee that would only require the treating doctor to contact the adjuster, and not the insurance carriers' preauthorization division, to receive approval for office visits and medications.

The Customer Service Program has proven to be an excellent training ground for employees who wish to advance in the agency. After they have received the training and experience necessary to develop their advocacy skills, CSRs are excellent candidates for Ombudsman positions. Six CSRs have already been promoted into the Ombudsman Program where injured employees are well served by their competence and skills. ❖

## Practical Skills Training

### Preparing Ombudsmen to Effectively Question Physicians on Medico-Legal Issues

In an effort to boost the effectiveness of OIEC Ombudsmen in medical dispute cases, Regional Staff Attorneys Ann Reeves and Brad Manus delivered training on how to question doctors on the medical and legal aspects of an injured employee/claimant's case. The course focused on extrapolating information from medical records, researching medico-legal information, and making opinion requests. The course was also designed to train Ombudsmen on how best to use the American Medical Association Guides and the Official Disability Guidelines through a series of practical exercises.

Due to the complexity of medical disputes, OIEC Ombudsmen must have both medical and legal knowledge. This training was designed to help them spot medical issues and train them to elicit detailed and critical responses from doctors. The course put additional focus on maximum medical improvement, aggravation of preexisting condition, extent of injury, and the calculation of impairment rating. With this training the Ombudsmen have learned additional skills and resources to better assist injured employees with their medical disputes. ❖



## Case Study: Death Benefits

Joey S worked as a truck driver and sustained a compensable injury to his back as the result of a motor vehicle accident in December 2004. He sought treatment for cervical radiculopathy, cervical facet syndrome, occipital neuralgia headaches, and insomnia secondary to chronic pain. To treat those symptoms, he was prescribed OxyContin, OxyIR, Skelaxin, and Lunesta. A year later in December 2005, Mr. S passed away accidentally as a result of the toxic effects of oxycodone. At the time of his death, Mr. S was receiving workers' compensation benefits from the insurance carrier. In October 2007, the insurance carrier denied that the compensable injury of December 2004 and the subsequent treatment were producing causes in the death of Mr. S. The insurance carrier contended that Mr. S died because he did not comply with his doctor's prescription medication instructions.



The first of two Benefit Review Conferences was held in January 2008 with three parties claiming death benefits (a common law wife of the deceased and two minor children, each by a different mother). In the course of the first Benefit Review Conference, it was discovered that Mr. S had a legal wife who was entitled to death benefits, and OIEC Ombudsman Hattie Dugas was able to locate her. A second Benefit Review Conference was held in October of 2009 with four, unrelated parties seeking death benefits; however, the issue of death benefits remained unresolved.

Prior to a Contested Case Hearing, both the common law wife and legal wife declined to pursue death benefits—a decision attributable to the amicable relationship that existed between the two women. In April 2010, the Contested Case Hearing was held with only the two minor children as beneficiaries of Mr. S. In considering the evidence in the case, the Hearing Officer made findings of fact that Mr. S was prescribed oxycodone to treat his compensable injury, that his death was caused by the toxic effects of oxycodone, and that no evidence existed that the deceased abused his prescribed medication in such a way as to contribute to his death. The Hearing Officer concluded that Mr. S's death was the result of his compensable injury and that the insurance carrier was ordered to pay benefits in a lump sum including interest to the two minor children. No appeal was filed by the insurance carrier.

It is unusual in cases where injured employees die as a result of prescription medication toxicity that the death is ruled to be compensable. This is due to the presumption that a doctor's prescription for a certain medication is *not* going to result in toxic levels and that, therefore, any occurrence of toxicity must be the result of misuse of that drug. In most cases, insurance carriers are relieved of their obligation to pay death benefits where the death is found to be the result of toxic levels of a prescribed medication. This case may be doubly unusual in that the insurance carrier did not appeal the decision. However, this may be partly attributable to the limited amount of benefits that must be paid considering that the only beneficiaries at the time of the Contested Case Hearing were minor children who are now 17 and 18 years old. ♦

## Employee Spotlight:

### Hattie Dugas (Ombudsman Program), Ombudsman Supervisor

Hattie Dugas was born in Waskom, Texas; a town centered in a cluster of oil and gas wells less than a mile from the Louisiana border. When she was five, her family moved to Houston. Hattie attended Phillis Wheatley High School where she was a member of the Purple and White Marching Squad. In 1969, she married, and for the next 13 years she lived wherever her husband's Air Force deployment took them. Hattie has lived as far away as Misawa, Japan and Plattsburgh, New York—a city just 35 miles south of Montréal, Canada. Hattie's career in workers' compensation began in 1982 when she took a job as a mail clerk with the Industrial Accident Board. In a familiar story, she worked her way up from mail clerk to Assistant Disability Determination Officer and then to Ombudsman. In total, Hattie has 29 years of state service, including five with the Department of Mental Health and Mental Retardation in Abilene, Texas.

Luz Loza, the Director of the Ombudsman Program, described Hattie as a "mother to her co-workers" and a "keeper of the peace." Hattie describes herself as an outgoing and compassionate person—an "ambassador of the peace." It's not a stretch to describe her as a true believer in the role of advocate for those in need. ♦

